

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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ROBERT DAVIS

Plaintiff,

-against-

SACHEM CENTRAL SCHOOL DISTRICT, SACHEM
CENTRAL SCHOOL DISTRICT BOARD OF
EDUCATION, JOHN AND JANE DOE 1-30, teachers,
supervisors, employees, in their official and individual
capacities, whose identities are presently unknown to
PLAINTIFF,

Defendants.
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Index No.

Date Purchased:

Plaintiff designates
SUFFOLK

County as the place of trial.


The basis of the venue is
Defendants' place of
business.

SUMMONS


To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to
serve a copy of your answer, or, if the complaint is not served with this summons, to serve a
notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this
summons, exclusive of the day of service (or within 30 days after the service is complete if this
summons is not personally delivered to you within the State of New York); and in case of your
failure to appear or answer, judgment will be taken against you by default for the relief
demanded in the complaint.

Dated: New York, New York
November 4, 2019



MICHAEL G. DOWD
Attorney for Plaintiff
600 Third Avenue, 15th Floor
New York, NY 10016
(212) 751-1640



LAURA A. AHEARN
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
ROBERT DAVIS

Plaintiff,

Index No.
Date Filed:

-against-

VERIFIED COMPLAINT

SACHEM CENTRAL SCHOOL DISTRICT, SACHEM
CENTRAL SCHOOL DISTRICT BOARD OF
EDUCATION, JOHN AND JANE DOE 1-30, teachers,
supervisors, employees, in their official and individual
capacities, whose identities are presently unknown to
PLAINTIFF,

Defendants.

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PLAINTIFF, ROBERT DAVIS, by his attorney, Michael G. Dowd and Laura A. Ahearn,
complaining of DEFENDANTS, hereby alleges the following:

JURISDICTION AND VENUE

1. This action is timely commenced pursuant to the New York State Child Victims Act, dated February 14, 2019, and CPLR § 214-g.
2. This Court has jurisdiction pursuant to CPLR § 301 as DEFENDANTS' principal place of business is in New York and because much of the unlawful conduct complained of herein occurred in New York.
3. Venue is proper pursuant to CPLR § 503 because Suffolk County is the principal place of business of DEFENDANTS. In addition, many of the events giving rise to this action occurred in Suffolk County.

AS AND FOR A FIRST CAUSE OF ACTION:**NEGLIGENT SUPERVISION**

4. The PLAINTIFF, ROBERT DAVIS (hereinafter "PLAINTIFF") was born on August 16, 1964. He is a resident of the state of Massachusetts.
5. PLAINTIFF attended schools in the SACHEM CENTRAL SCHOOL DISTRICT from 1969 when he entered Kindergarten, through 1982 when he graduated from 12th grade.
6. DEFENDANT SACHEM CENTRAL SCHOOL DISTRICT (hereinafter "SCSD") is at all material times a public-school district existing under the laws of the State of New York.
7. DEFENDANT SACHEM CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION (hereinafter "BOE") is at all material times a board of education existing under the laws of the State of New York.
8. Chippewa Elementary School (hereinafter "Chippewa") was a public school for grades Kindergarten through sixth grade. Upon information and belief Chippewa now comprises grades Kindergarten through fifth grade. Chippewa is an elementary school located in Holtsville, New York and a part of DEFENDANT SCSD.
9. DEFENDANTS JOHN AND JANE DOE 1-30, whose names are presently unknown, were members of the BOE during all material times herein. Upon information and belief, the BOE is responsible for the operation of the SCSD schools, including hiring of administrators.

10. DEFENDANTS SCSD, BOE, and JOHN AND JANE DOE 1-30 will be referred to collectively as “DEFENDANTS.”
11. Upon information and belief, Francis Kocivar (hereinafter “Kocivar”) was hired by DEFENDANTS as a music teacher at Chippewa.
12. Upon information and belief, Kocivar remained an employee of DEFENDANTS through 1982.
13. Upon information and belief, when Kocivar met PLAINTIFF in or around 1973, she was an employee and agent of DEFENDANTS acting within the course and scope of her authority as a SCSD teacher.
14. Kocivar continued acting as an employee and agent of DEFENDANTS through the entire period during which Kocivar sexually abused PLAINTIFF.
15. PLAINTIFF first met Kocivar when he was a student in Kocivar’s music class in or around 1973.
16. Soon after Kocivar met PLAINTIFF in or around 1973, she began a process of grooming PLAINTIFF with the goal of sexually abusing him.
17. The grooming included but was not limited to Kocivar giving PLAINTIFF special attention, befriending PLAINTIFF’S parents, and having dinner with PLAINTIFF’S parents at their home and at her home.
18. This grooming behavior occurred on DEFENDANTS’ property and in the presence of or within the observation of DEFENDANTS’ teachers, employees, and administrators.
19. At all material times, PLAINTIFF was aware of no rules, regulations or policies in place by DEFENDANTS concerning or addressing sexual abuse and/or sexual

misconduct of students, such as PLAINTIFF, by teachers such as Kocivar.

20. During all material times, PLAINTIFF received no training or information in any form, including but not limited to, classroom instruction, oral presentation or through written document on how to deal with sexual misconduct, sexual abuse, or sexual boundary violations by DEFENDANTS' employees on students like himself.
21. Kocivar's sexual abuse of PLAINTIFF began in or around 1976.
22. Kocivar's sexual abuse of PLAINTIFF included but was not limited to Kocivar kissing and hugging PLAINTIFF, Kocivar fondling and masturbating PLAINTIFF'S genitals, and PLAINTIFF fondling Kocivar's breasts under and over her clothing.
23. The sexual abuse occurred on DEFENDANTS' property in the music teacher's office at Chippewa. The abuse also occurred in: PLAINTIFF'S family home and in the swimming pool, in the backseat of Kocivar's car and in Kocivar's home. The abuse also occurred in Eisenhower Park and at the Vanderbilt Mansion in Centerport, New York.
24. PLAINTIFF estimates the abuse occurred on at least 80 to 100 separate occasions between 1976 and 1978.
25. Upon information and belief, during all material times herein, when PLAINTIFF was enrolled in DEFENDANTS' schools, communicating and otherwise interacting with Kocivar, he was entrusted by his parents to the care of DEFENDANTS and during such periods the DEFENDANTS were acting in the capacity of *in loco parentis* because DEFENDANTS assumed custody and control

over him as a minor child and as a student in their schools.

26. Upon information and belief, Kocivar used her position of trust and the authority vested in her by DEFENDANTS for the purpose of sexually abusing PLAINTIFF.
27. Upon information and belief, the sexual abuse of PLAINTIFF by Kocivar was foreseeable.
28. Upon information and belief, at all material times, DEFENDANTS had the duty to exercise the same degree of care and supervision over the students, including PLAINTIFF, under their control as a reasonably prudent parent would have exercised under the same circumstances. This means that DEFENDANTS assumed a duty of care to protect the safety and welfare of PLAINTIFF as a student in DEFENDANTS' schools.
29. Upon information and belief, at all material times, DEFENDANTS owed a duty to PLAINTIFF to provide a safe and nurturing educational environment, where he would be protected from teachers like Kocivar who were under the employment and control of DEFENDANTS.
30. Upon information and belief, during Kocivar's employment by DEFENDANTS and while PLAINTIFF was a student in DEFENDANTS' care, DEFENDANTS failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
31. During all material times, DEFENDANTS owed a special duty to PLAINTIFF that required DEFENDANTS to take reasonable steps to anticipate such behavior from its employees like Kocivar, which threatened the safety of students including PLAINTIFF.

32. At all material times, DEFENDANTS had a duty to properly supervise Kocivar as their employee and because of their duty of care to PLAINTIFF.
33. At all material times, PLAINTIFF reposed his trust and confidence as a student and minor child in DEFENDANTS, who occupied a superior position of influence and authority over PLAINTIFF to provide PLAINTIFF with a safe and secure educational environment.
34. Upon information and belief, at all material times, DEFENDANTS knew or should have known of Kocivar's propensity to sexually abuse minor students.
35. Upon information and belief, DEFENDANTS negligently failed to adequately implement a reasonable or effective supervisory system, plan, protocol or procedure for supervising personnel so as to prevent inappropriate, offensive, sexual and/or abusive contact of students by DEFENDANTS' employees.
36. Upon information and belief, the injury to PLAINTIFF resulted from DEFENDANTS' failure to provide PLAINTIFF the supervision of a parent of ordinary prudence under the same circumstances.
37. Upon information and belief, the injuries to PLAINTIFF were a foreseeable consequence of DEFENDANTS' negligent failure to supervise Kocivar and PLAINTIFF. Said injuries were caused by or contributed to by the carelessness, recklessness and the grossly negligent conduct of the DEFENDANTS, their agents, servants and/or employees, in failing to properly and adequately supervise the conduct of Kocivar as it related to PLAINTIFF.
38. DEFENDANTS were wanton, reckless, officially tolerant and deliberately indifferent to abuse of PLAINTIFF by Kocivar.

39. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and as a result PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.
40. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.
41. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7).
42. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION:

NEGLIGENT RETENTION

43. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.
44. Upon information and belief, as more fully alleged above, DEFENDANTS' duty of care to PLAINTIFF included a duty not to retain an employee like Kocivar who would use her position of authority and influence to harm students such as PLAINTIFF.

45. Upon information and belief, DEFENDANTS knew or should have known that Kocivar was grooming PLAINTIFF for the purpose of sexually abusing him and failed to take any steps to stop the abuse or prevent harm to PLAINTIFF.
46. Upon information and belief, DEFENDANTS knew or should have known that Kocivar was sexually abusing PLAINTIFF and/or knew or should have known of her propensity to sexually abuse minor students with whom she came in contact.
47. When PLAINTIFF was in their care, said DEFENDANTS failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
48. DEFENDANTS were wanton, reckless, officially tolerant and deliberately indifferent to the abuse of PLAINTIFF by Kocivar.
49. DEFENDANTS are liable to PLAINTIFF as a result of their recklessness, official tolerance and deliberate indifference to the harm caused to PLAINTIFF by Kocivar.
50. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and as a result PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.

51. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.
52. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7).
53. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION:

NEGLIGENT FAILURE TO TRAIN TEACHERS AND ADMINISTRATORS RELATED TO SEXUAL ABUSE AND TRAIN STUDENTS RELATING TO SEXUAL ABUSE

54. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.
55. Upon information and belief, DEFENDANTS, their agents, servants and employees owed a duty of care to PLAINTIFF as more fully alleged above. That duty included the duty to train and educate employees and administrators and to establish adequate, effective policies and procedures calculated to detect, prevent and address inappropriate employee behavior, including employee-student boundary violations, sexually inappropriate employee behavior, and the sexual abuse of students by employees for the purpose of preventing the sexual abuse of students like PLAINTIFF.
56. Upon information and belief, DEFENDANTS did not establish effective training and education programs, policies and procedures for their administrators, teachers and employees calculated to detect, prevent and address the problem of the

inappropriate employee behavior, including employee-student boundary violations, sexually inappropriate employee behavior, and the sexual abuse of students by employees.

57. Upon information and belief, in failing to establish such training and education programs, policies and procedures for employees and administrators, DEFENDANTS failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
58. Upon information and belief, DEFENDANTS had a duty to train and educate students including PLAINTIFF on inappropriate employee behavior, including employee-student boundary violations, sexually inappropriate employee behavior, and the sexual abuse of students by employees to establish effective policies and procedures to address said problems.
59. Upon information and belief, DEFENDANTS did not train and educate PLAINTIFF on the problem of inappropriate employee behavior and conduct including employee-student boundary violations, sexually inappropriate employee behavior, and the sexual abuse of students by employees and did not establish effective policies and procedures to address said problems.
60. Upon information and belief, in failing to establish such training and education programs, policies and procedures for students like PLAINTIFF, DEFENDANTS failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
61. Upon information and belief, DEFENDANTS are liable to PLAINTIFF, as the result of their negligent failure to establish effective training and education

programs, policies and procedures for their administrators, teachers and employees calculated to detect and prevent inappropriate employee behavior, including employee-student boundary violations, sexually inappropriate employee behavior, and the sexual abuse of students by employees.

62. Upon information and belief, DEFENDANTS are also liable to PLAINTIFF for their failure to train and educate PLAINTIFF as a student on the problem of inappropriate employee behavior, including employee-student boundary violations, sexually inappropriate employee behavior, and the sexual abuse of students by employees and to establish effective policies and procedures to address said problems.
63. DEFENDANTS were wanton, reckless, officially tolerate and deliberately indifferent by their failure to develop such effective training and education programs, policies and procedures for employees, administrators and students.
64. DEFENDANTS, their agents, servants and employees were negligent, careless and reckless and acted willfully, wantonly and were grossly negligent in failing to establish adequate and effective professional training and education programs and procedures for their employees calculated to prevent abuse of youth.
65. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and as a result

PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.

66. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.
67. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).
68. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION:

NEGLIGENT FAILURE TO PROVIDE A SAFE AND SECURE ENVIRONMENT

69. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.
70. At all material times, as more fully set forth above, DEFENDANTS had the duty to exercise the same degree of care and supervision over the students under their control as a reasonably prudent parent would have exercised under similar circumstances.
71. During all material times, DEFENDANTS owed a special duty to PLAINTIFF as a student. This special duty required DEFENDANTS to take reasonable steps to anticipate such threats from its employees like Kocivar which threatened the safety of PLAINTIFF.

72. Upon information and belief, by virtue of both their duty of care to PLAINTIFF and the positions of authority and influence they exercised over him, DEFENDANTS had a duty to PLAINTIFF to provide her a reasonably safe and secure environment at DEFENDANTS' schools.
73. Upon information and belief, DEFENDANTS failed to provide a reasonably safe environment to PLAINTIFF by failing to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
74. As a result, DEFENDANTS are liable to PLAINTIFF for their negligent failure to provide a reasonably safe and secure environment.
75. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and as a result PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.
76. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.
77. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).

78. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION:

FAILURE TO REPORT CHILD ABUSE


79. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.
80. Upon information and belief, DEFENDANTS had actual and/or implied knowledge of Kocivar's sexually abusive actions and knowingly and willfully failed to report and to prevent further abuse of PLAINTIFF pursuant to Section 413 of the Social Services Law.
81. Upon information and belief, in not reporting suspicions of Kocivar's sexually abusive behavior towards PLAINTIFF and other students, DEFENDANTS failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.
82. DEFENDANTS are jointly and severally liable to PLAINTIFF for damages as a result of this failure pursuant to Section 420 of the Social Services Law.
83. DEFENDANTS their agents, servants and employees were careless, reckless and grossly negligent in failing to report suspected child abuse by Kocivar.
84. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some

or all of these injuries are of a permanent and lasting nature; and as a result PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.


85. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.
86. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).
87. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, the PLAINTIFF demands judgment against the DEFENDANTS, together with compensatory and punitive damages, and the interest, costs and disbursements pursuant to the causes of action herein.

Dated: New York, New York
November 4, 2019



MICHAEL G. DOWD
Attorney for PLAINTIFF
600 Third Avenue, 15th Floor
New York, NY 10016
(212) 751-1640



LAURA A. AHEARN
Attorney for PLAINTIFF
3075 Veterans Memorial Highway Suite 200
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(631) 942-1078


VERIFICATION BY ATTORNEY

MICHAEL G. DOWD, an attorney being duly admitted before the courts of the State of New York, hereby affirms the following under penalties of perjury:

That he is an attorney for the PLAINTIFF in the above-entitled action with offices located at 600 Third Ave, New York, New York; that he has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

That the reason why this verification is made by deponent instead of PLAINTIFF is because PLAINTIFF is not within the County of New York where deponent has his office. Deponent further says that the grounds of his belief as to all matters in the VERIFIED COMPLAINT not stated to be upon his knowledge are based upon conversations with the PLAINTIFF and other writings relevant to this action.

Dated: New York, New York
November 4, 2019



MICHAEL G. DOWD
Attorney for Plaintiff
600 Third Avenue, 15th Floor
New York, NY 10016
(212) 751-1640